IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

C.E.A No. 90 of 2007

Date of Decision: 16.11.2007

Commissioner of Central Excise, Delhi-III

…Appellant

Versus

M/s Electrolux Kelvinator Ltd.

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Kamal Sehgal, Advocate,

for the appellant-revenue.

M.M. KUMAR, J.

The revenue has filed the instant appeal under Section 35G of the Central Excise Act, 1944 (for brevity, 'the Act'), challenging order dated 6.11.2006, passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for brevity, 'the Tribunal'), claiming that the following questions of law would arise for determination of this Court:-

"(i) Whether the respondent was entitled to modvat credit of S.S. Sheets as Scrap after receipt of required width from the supplier?

(ii) Whether the respondent is entitled to benefit of Rule 57-D of clearance of modvatable inputs?

(iii) Whether the respondent is entitled to modvat credit on S.S. Sheets which were received as per their requirement and were removed as scrap without being used as inputs in the manufacture of final product?

(iv) Whether the modvat credit of Rs. 36,343/- and Rs. 476/- on inputs found short is deniable and recoverable under Rule 57(1) of the Central Excise Rules, 1944?

(v) Whether the Tribunal was justified in reducing the penalty while upholding the majority of the order passed by the adjudicating authority?

Brief facts of the case are that the assessee company is engaged in the manufacture of Washing Machines falling under Chapter Heading 8450 of the Central Excise Tariff Act, 1985 (for brevity, 'the Tariff Act'). On 24.11.1998, in the presence of Shri A.K. Rai, authorized signatory of the assessee-company, the factory premises was inspected by the officers of the Central Excise, Division-I, Gurgaon, and statutory records and other relevant records were checked/verified by them. It was noticed that there were variance in the physical and book stock of finished goods, clearances of modvat credit availed inputs and removal of modvat credit availed inputs at a lower value. Un-accounted finished goods and records were seized. Thereafter a show cause notice was issued proposing to confiscate the seized goods, raising demand of duty as well as for

imposition of penalty. The assessee-company took the stand that the seized goods were day's production and duty has been paid correctly on the modvat inputs as they were scrapped and there was no clandestine removal of any goods. The Adjudicating Authority vide order-in-original dated 24.11.1999, confirmed the demand, confiscated the seized goods with an option to redeem the goods on payment of redemption fine and also imposed penalty.

Feeling aggrieved, the assessee-company preferred an appeal, which was dismissed by the Commissioner (Appeals), vide order dated 19.5.2004, upholding the order of the Adjudicating Authority. The assessee-company then filed further appeal before the Tribunal, which has been allowed vide order dated 6.11.2006, subject matter of present appeal. While referring to the statement of the authorized signatory of the assessee-company, recorded under Section 14 of the Act, the Tribunal has observed as under:-

> "The lower authorities have not produced any contrary evidence that would indicate that cleared SS Sheet were not scrap. The authorized signatory categorically stated that these sheets were rejected after shearing i.e. after the same were issued and put to use in the shop floor. If that be so, then the demand of duty on this count is unsustainable in as much that is settled law that the scrapped items do not fetch the same value as that of new one. In view of the facts and circumstances, the demand of duty on this count is unsustainable and is

(thus?) impugned order is liable to be set (aside?) to that extent."

On the issue of shortage of the inputs on which modvat credit was availed, the Tribunal in para 5.5 and 6 of its order has observed as under:-

" It can noticed that the lower authorities have not considered the pleadings of appellant in totality. I find from records that the appellant has prepared a Good receipt note dated 22.11.1998 for the receipt of 230 outer tubs in the factory premises. The said GRN indicates that the goods were sent for Inspection and there is an acceptance of the same after inspection. It is seen that the lower authorities have not considered the fact that the authorized signatory has stated in his statement that all the inputs are issued on the same date on which they are received and inspected. The physical stock verification report also indicates that the stock was taken only in the stores of the factory premises. If the authorities had taken stock lying on the shop floor and reconciled the same with the book stock, it would have indicated correct position. Further the lower authorities have not adduced any contrary evidence to show that these inputs were not utilized in the manufacture of finished goods. Under the circumstances the demand of the duty on this point is unsustainable. The impugned order to the extent

it confirms the demand of duty on short found inputs is set aside.

6. It is seen from the orders of the lower authorities that the penalty imposed on the appellant is a consolidated one for all the infractions. Since, I have allowed the appeal of the appellant partly as indicated in the above paragraphs, the penalty imposed on the appellant also requires reconsideration. In the facts and circumstances of the case, the penalty imposed on the appellant is reduced to Rs. 20,000/-."

After hearing learned counsel for the appellant-revenue and perusing various orders placed on record, we are of the considered view that the aforementioned findings recorded by the Tribunal are unassailable and same are not open to any challenge. Pure findings of fact have been recorded by the Tribunal, which would not constitute any substantial question of law within the meaning of Section 35G of the Act. The department did not produce any evidence to show that the inputs were not utilised in the manufacture of finished goods or that there is any contravention of provisions of the Act or Rules with the intention to evade payment of duty. It is in these circumstances that the Tribunal disagreed with the view taken by the Adjudicating Authority as upheld by the Commissioner (Appeals). The jurisdiction of the Tribunal under Sections 35A and 35C of the Act is entirely different than the power of this Court conferred by Section 35G of the Act. The Tribunal has

been clothed with the power nay duty of confirming, modifying or annulling the decision or order appealed against passed under Section 35A of the Act by the Commissioner (Appeals) whereas the High Court under Section 35G of the Act could exercise power in cases involving substantial question of law. In the present case, the findings recorded by the Tribunal are based on evidence. Therefore, we find no legal infirmity in the view taken and accordingly the appeal is liable to be dismissed.

In view of above, this appeal fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

November 16, 2007
Pkapoor